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U.S. Department of Justice

Immigration and Naturalization Service

PUBLIC COPY

OFFICE OF ADMINISTRATIVE APPEALS
425 Eye Street N.W.
U.I.B., 3rd Floor
Washington, D.C. 20536

JAN 13 2003

File: [REDACTED] Office: CALIFORNIA SERVICE CENTER

Date:

IN RE: Petitioner:
Beneficiary:

Petition: Immigrant Petition for Alien Worker as a Skilled Worker or Professional Pursuant to § 203(b)(3) of the Immigration and Nationality Act, 8 U.S.C. 1153(b)(3)

IN BEHALF OF PETITIONER:

Identifying data deleted to
prevent identity and associated
invasion of personal privacy

INSTRUCTIONS:

This is the decision in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

If you believe the law was inappropriately applied or the analysis used in reaching the decision was inconsistent with the information provided or with precedent decisions, you may file a motion to reconsider. Such a motion must state the reasons for reconsideration and be supported by any pertinent precedent decisions. Any motion to reconsider must be filed within 30 days of the decision that the motion seeks to reconsider, as required under 8 C.F.R. 103.5(a)(1)(i).

If you have new or additional information that you wish to have considered, you may file a motion to reopen. Such a motion must state the new facts to be proved at the reopened proceeding and be supported by affidavits or other documentary evidence. Any motion to reopen must be filed within 30 days of the decision that the motion seeks to reopen, except that failure to file before this period expires may be excused in the discretion of the Service where it is demonstrated that the delay was reasonable and beyond the control of the applicant or petitioner. Id.

Any motion must be filed with the office that originally decided your case along with a fee of \$110 as required under 8 C.F.R. 103.7.

FOR THE ASSOCIATE COMMISSIONER,
EXAMINATIONS

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The preference visa petition was revoked by the Director, California Service Center. A subsequent appeal was dismissed by the Associate Commissioner, Examinations. The matter is now before the Associate Commissioner on a motion to reopen. The motion will be granted, the previous decisions of the director and the Associate Commissioner will be affirmed and the petition will be denied.

The petitioner is a dentist. He seeks to employ the beneficiary permanently in the United States as a dental assistant. As required by statute, the petition was accompanied by certification from the Department of Labor. The director determined that the beneficiary had misrepresented her work experience and was not qualified for the proffered position. The Associate Commissioner affirmed the director's decision to deny the petition.

On motion, counsel submits a statement.

The Application for Alien Employment Certification (Form ETA 750), indicates that the minimum requirement to perform the job duties of the proffered position is two years of experience in the job being offered. In block 15, the labor certification requires a "certificate in coronal polish" and states that the applicant "[m]ust have a Certificate by the California Board of Dental Examiners in Radiation and Safety Techniques."

Based on the overseas investigation, it was found that the beneficiary did not possess the claimed experience as a dental assistant. The director subsequently issued a Notice of Intent to Deny, the petitioner failed to respond and the petition was subsequently denied by director. The decision was appealed and dismissed by the Associate Commissioner.

On motion, counsel states that:

The petitioner hereby moves to reopen this matter in order to provide additional documents for your consideration. Unfortunately, the documents are not available yet since we have not had sufficient time to obtain them after the denial of our appeal. However, we wish to file the motion timely and request that you permit us additional time to file the supporting documents.

No additional evidence has been received to date. Therefore, upon review, the petitioner has been unable to present sufficient evidence to overcome the findings of the director in his decision to revoke the approval of the petition. The petitioner has not established eligibility pursuant to section 203(b)(3) of the Act and the petition may not be approved.

The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. 1361. The petitioner has not met that burden.

ORDER: The Associate Commissioner's decision of May 24, 2001 is affirmed. The petition is denied.